



Comptroller General  
of the United States  
Washington, D.C. 20548

147,219

## Decision

**Matter of:** M/RAD Corporation

**File:** B-248146

**Date:** July 29, 1992

Jeffrey Marshall for the protester.  
Major William R. Medsger, Esq., and David H. Scott, Esq.,  
Department of the Army, for the agency.  
Jennifer Westfall-McGrail, Esq., and Christine S. Melody,  
Esq., Office of the General Counsel, GAO, participated in  
the preparation of the decision.

### DIGEST

1. Agency properly rejected bid received in response to brand name or equal solicitation as nonresponsive where item offered did not conform to listed salient characteristics.
2. Protest that attribute listed as a salient characteristic is not a significant feature of the item to be acquired is dismissed as untimely where not filed prior to bid opening date.
3. Protest that brand name model does not possess required salient characteristics is dismissed as untimely where not filed prior to bid opening date.

### DECISION

M/RAD Corporation protests the rejection of its bid as nonresponsive and the award of a contract to Lab Innovative Technology under invitation for bids (IFB) No. DAAD05-92-B-0010, a brand name or equal solicitation issued by the Department of the Army, Test and Evaluation Command, for a package tester. The agency rejected M/RAD's bid as nonresponsive because the protester failed to demonstrate that the "equal" item that it offered complied with the salient characteristics of the brand name item enumerated in the IFB. The protester contends that the item that it offered does in fact conform to the listed requirements. M/RAD further argues that an award to Lab Innovative Technology was improper since the brand name item offered by Lab Innovative Technology did not comply with a number of the salient characteristics listed in the IFB.

We deny the protest in part and dismiss it in part.

The IFB solicited bids for a package tester, Lab Innovative Technology Model No. 12,000-SV-MC or equal, and listed the salient characteristics that any equal item offered would be required to possess.<sup>1</sup> Only M/RAD and Lab Innovative Technology responded to the solicitation. M/RAD offered its own model number 96144(12000)TS, while Lab Innovative Technology offered the brand name model. The contracting officer determined that M/RAD's bid, although lower in price, was nonresponsive, and on March 9, 1992, awarded a contract to Lab Innovative Technology.

The contracting officer notified the protester that its bid had been rejected because it failed to demonstrate compliance with salient characteristics governing table motion and control, whereupon M/RAD filed an agency-level protest. The agency responded by advising M/RAD that it had reevaluated its bid, and concluded that the reasons originally given for rejection of the bid had been in error. The agency stated that the bid nevertheless was nonresponsive because, while one of the salient characteristics was for a unit with a table surface constructed of planking with a maximum spacing of 1/8 inch, M/RAD had offered a unit with a table surface constructed of planking with a minimum spacing of 1/8 inch. Upon receipt of the agency's denial of its protest, M/RAD protested to our Office.

M/RAD contends that although the IFB required a table surface constructed of 3 inches by 8 inches hardwood planking with a maximum spacing of 1/8 inch, and it stated in its bid that it was offering a unit with a table surface constructed of 3 inches by 8 inches hardwood planking with a minimum spacing of 1/8 inch, its bid was nonetheless responsive because "a spacing of 1/8 inch is common to the specification and the offer." Although it is true that the protester could perform in a manner consistent with both its bid and the IFB's requirements by furnishing a unit with a table surface constructed of planking with a spacing of exactly 1/8 inch, the protester did not offer such an item; rather, it offered a package tester with a table surface constructed of planks at least 1/8 inch apart. It would thus have been consistent with the terms of M/RAD's bid for it to have furnished the agency with a unit containing planking 1/2 inch or 3/4 inch (or more) apart, which would have been inconsistent with the agency's requirements, as stated in the IFB. We therefore find that the agency correctly determined that the item offered by M/RAD did not conform to the solicitation's salient characteristics and that its bid was thus nonresponsive. T & T Prods., Inc., B-243895, Aug. 7, 1991, 91-2 CPD ¶ 139.

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<sup>1</sup>A package tester is a device used to shake packages to determine the reliability of the items or containers.

The protester also argues that the requirement for a maximum spacing of 1/8 inch between planks should not be regarded as a salient characteristic since a spacing of 1/8 inch "cannot affect the shock transmitted to the test item, especially when these planks are covered with a 1/4 inch cold rolled steel plate," as required elsewhere in the item description. Since the spacing is not significant, the protester further asserts, the agency should have permitted it to correct its bid, pursuant to Federal Acquisition Regulation (FAR) § 14.405,<sup>2</sup> to provide for a maximum, rather than a minimum, spacing of 1/8 inch. (According to the protester, there is nothing inherent in the design of its unit that would prevent such spacing, and it in fact intended to offer an item with maximum spacing of 1/8 inch.)

Protesters are required to file protests against solicitation improprieties apparent on the face of the solicitation no later than the time set for receipt of bids or proposals. 4 C.F.R. § 21.2(a)(1) (1992); General Projection Sys., Inc., B-241418.3, Dec. 27, 1991, 91-2 CPD ¶ 582. The protester's argument that the spacing requirement is not significant and therefore should not have been listed as a salient characteristic, was not raised until after award was made, and thus constitutes an untimely protest against the IFB's terms; accordingly, we will not consider it. Further, given that the protester cannot now challenge the saliency of the spacing requirement, we have no basis to conclude that the defect in M/RAD's bid is a minor one that it should be permitted to correct pursuant to FAR § 14.405. General Projection Sys., Inc., supra.

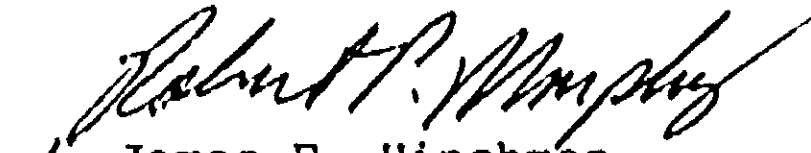
M/RAD also argues that the award to Lab Innovative Technology was improper since the brand name model offered by Lab Innovative Technology fails to meet a number of the salient characteristics listed in the IFB, including the requirement for a temperature chamber. Alleged inconsistencies between a brand name item and the salient characteristics must be protested prior to the closing date for receipt of bids or proposals since they also concern

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<sup>2</sup>FAR § 14.405 permits contracting officers to allow a bidder to cure a deficiency resulting from a minor informality or irregularity in a bid or to waive the deficiency.

improprieties apparent on the face of the solicitation,  
VTEC Laboratories, Inc., B-245481, Dec. 26, 1991, 91-2 CPD  
¶ 581. Accordingly, we dismiss this basis of protest as  
well.

The protest is denied in part and dismissed in part.

  
for James F. Hinchman  
General Counsel